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LANSING

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Analysis of Enrolled Senate Bill 123

Topic: Nonprofit Corporations—Electronic Communications
Sponsor: Senator Sanborn
Co-Sponsors: Senators Richardville, Hardiman, Garcia, McManus, VanWoerkom, Olshove, and Cropsey
Committee: Senate Economic Development & Regulatory Reform
House Commerce
Date Introduced: January 30, 2007
Date Enrolled: February 19, 2008
Date of Analysis: January 29, 2008

Position: The Department of Labor & Economic Growth supports the bill.

Problem/Background: The Business Corporation Act was amended in 2001 to permit corporation business to be conducted electronically. Many nonprofit corporations are very aware of these changes in the Business Corporation Act and have also been using electronic communication to conduct business. It has been suggested that similar changes should be made to the Nonprofit Corporation Act.

Description of Bill: The bill amends the Nonprofit Corporations Act to permit electronic transmission of documents. The bill declares electronic transmission to be equivalent to notice in writing. If a document was not originally submitted electronically, the administrator is prohibited from giving written notice by electronic transmission.

A board of directors may hold a shareholder meeting solely by means of remote communication. The notice of the meeting is required to include a description of the means of remote communication to be used. Shareholders and members not physically present may participate in a shareholder meeting by remote communication subject to guidelines and procedures adopted by the board of directors. Such persons are considered present in person and may vote if the following conditions are met:

- The corporation implements reasonable measures to verify that each person considered present and permitted to vote is a shareholder.
- The corporation implements reasonable measures to provide each shareholder and member a reasonable opportunity to participate in the meeting and to vote on matters submitted. This includes an opportunity to read or hear the proceedings substantially concurrently.
- A record of the vote or other action taken by any shareholder or member.
- A shareholder or member may be present and vote at an adjourned meeting by means of remote communication if he or she was permitted to be present and vote by that means in the original meeting notice.

Any notice given to a shareholder or member by a form of electronic transmission to which the shareholder or member has consented is considered effective.

The list of shareholders or members entitled to vote at a meeting continues to be required to be open to examination by any shareholder or member attending the meeting. At meetings held solely by means of remote communication, some means must be created for any shareholder or member to review the list on an electronic network.

The articles and bylaws of the corporation may provide for voting by electronic transmission.

“Electronic transmission” is defined as any form of communication that meets all of the following:

- It does not directly involve the physical transmission of paper;
- It creates a record that may be retained and retrieved by the recipient;
- It may be directly reproduced in paper form by the recipient through an automated process.

The House made two minor technical amendments to the bill.

Summary of Arguments

Pro: Unlike profit corporations, nonprofits do not clearly have the ability to conduct business electronically. This legislation is needed to create parity between the two acts and to modernize communication in nonprofit corporations.

The current provisions make it very difficult for some nonprofits to comply. For instance, cooperative organizations are governed by Chapter 11 of the act. A few of these organizations are extremely large and a physical meeting to conduct business is a daunting challenge.

Con: The references to voting by “electronic transmission” in Sections 441 and 451 require authority to vote by electronic transmission to be included in bylaws and articles, respectively. These requirements place limitations on what is permitted in Sections 405 (4) and 407 (4) and may cause confusion.

Comment: The department suggested amendments in the House to attempt to clear up the confusion. The amendments were accepted by the bill sponsor, but the Legislative Service Bureau believed that one of the proposed amendments clashed with Section 441. The House therefore did not do the proposed amendments.

Fiscal/Economic Impact

(a) Department

Budgetary: The bill will have no budgetary impact on the department.

Revenue: The bill will have no effect on revenue to the department.

Comments:

(b) State

Budgetary: The bill will have no budgetary impact on the state.

Revenue: The bill will have no effect on state revenue.

Comments:

(c) Local Government

Comments: The bill will not affect local government.

Other State Departments: The bill does not have a direct impact on any other state departments.

Any Other Pertinent Information: The bills were supported by the Michigan Society of Association Executives, the Michigan Nonprofit Association, the County Road Association, the Electric Cooperative Association, the Michigan Dental Association, and the Michigan Health & Hospital Association. There was no opposition in either house.

Administrative Rules Impact: The bill will not result in new or revised administrative rules.